



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

July 22, 2019

Colonel Andrew Kelly
District Commander – Jacksonville District
U.S. Army Corps of Engineers
701 San Marco Blvd.
Jacksonville, FL 32207

Subject: Pre-Partnership Credit Agreement No. 1 for the Lake Okeechobee Watershed Restoration Project

Dear Colonel Kelly:

During the 2019 legislative session, Florida legislators approved \$50 million as part of Specific Appropriation 1642A. This legislation directs the South Florida Water Management District (District) to use the funding for the design, engineering and construction of specific project components within the Lake Okeechobee Watershed Restoration Project (LOWRP) that are designed to achieve the greatest reductions in harmful discharges to the Caloosahatchee and St. Lucie Estuaries. It also directs the District to negotiate a Pre-Partnership Credit Agreement (PPCA) with the U.S. Army Corps of Engineers.

The District is seeking to enter into PPCA No.1 with the USACE for the LOWRP. This initial PPCA would encompass any of the Aquifer Storage and Recovery (ASR) or wetland restoration features identified in the LOWRP Draft Project Implementation Report and Environmental Impact Statement. Attached to this letter is a draft PPCA for your review.

Based on our initial analysis and review of the research, we will be pursuing the ASR features of LOWRP to quickly provide benefits to the northern estuaries while offering short- and long-term recoverable storage, consistent with the legislative intent of this appropriation. The Kissimmee Pilot ASR has already demonstrated promising results for this important tool for LOWRP.

However, as partners, we must be confident that we fully understand the extensive ASR research already conducted prior to new ASR well construction and utilize this information to responsibly move forward. We plan to thoroughly review previous pilot studies, reports, and other research, and request that the U.S. Army Corps of Engineers participate in and assist with this review.

The generous state funding became available on July 1, 2019, and the District looks forward to working with you in an expeditious manner to negotiate and execute PPCA No.1 for the LOWRP. We appreciate your commitment to our partnership and America's Everglades. If you have any questions, please don't hesitate to contact me.

Sincerely,

A blue ink signature of Drew Bartlett, written in a cursive style.

Drew Bartlett
Executive Director

DB/mj
Enclosure

COMPREHENSIVE EVERGLADES RESTORATION PLAN
PRE-PARTNERSHIP CREDIT AGREEMENT NO. 1
BETWEEN
THE DEPARTMENT OF THE ARMY
AND THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
FOR WORK CARRIED OUT
FOR
THE LAKE OKEECHOBEE WATERSHED RESTORATION PROJECT

THIS AGREEMENT is entered into this _____ day of _____, 2019, by and between the Department of the Army (hereinafter the "Government") represented by the U.S. Army Commander, Jacksonville District (hereinafter the "District Commander") and the South Florida Water Management District (hereinafter the "Non-Federal Interest") represented by its Executive Director.

WITNESSETH THAT:

WHEREAS, the Non-Federal Interest proposes to perform certain work (hereinafter "the Proposed Work", as defined in Paragraph 1 of this Agreement) prior to the execution of a Project Partnership Agreement for the construction of the environmental restoration at the Lake Okeechobee Watershed Restoration Project; and

WHEREAS, Section 601(e)(5)(B) of the Water Resources Development Act of 2000, as amended by Section 6004 of the Water Resources Development Act of 2007, provides that the Secretary of the Army may provide credit toward the non-Federal share for the reasonable cost of any work performed in connection with a project that is necessary for the implementation of the Comprehensive Everglades Restoration Plan, including work completed in the period of design or period of construction, as well as work carried out before the date of a Project Partnership Agreement for a project, to include work carried out prior to a project being authorized by Congress, if such work is carried out pursuant to terms and conditions specified in an agreement between the Non-Federal Interest and the Assistant Secretary of the Army.

NOW, THEREFORE, the Government and the Non-Federal Interest agree as follows:

1. The Non-Federal Interest proposes to carry out the Proposed Work in accordance with the terms and conditions of this Agreement. The Proposed Work may consist of the following, as generally described in the Lake Okeechobee Watershed Restoration Project Draft Integrated Project Implementation Report and Environmental Impact Statement dated July 2019:

The Lake Okeechobee Watershed Restoration Project plan includes:

- a. The following 5 million gallons per day per well Aquifer Storage and Recovery locations:
 - i. Within the Wetland Attenuation Feature:
 - a. Construction, testing and operation of three well clusters co-located with the WAF; and
 - b. Associated electrical power upgrades and telemetry; and
 - c. Construction of associated ASR monitoring wells as required by permit.
 - ii. Within the watershed:
 - a. Construction, testing and operation of one cluster adjacent to the C-44 Canal in Port Mayaca;
 - b. Construction, testing and operation of three clusters adjacent to the L-63N Canal and L-63S Canal and rehabilitation, testing and operation of existing systems;
 - c. Construction, testing and operation of two clusters adjacent to the C-38 Canal downstream of the S-65E and rehabilitation, testing and operation of existing systems;
 - d. Construction, testing and operation of one cluster located along Taylor Creek downstream of the S-192 and upstream of the S-133 pump station;
 - e. Construction, testing and operation of one cluster along C-40 Canal downstream of S-72;
 - f. Construction, testing and operation of one cluster along the C-41 Canal downstream of the S-71;
 - g. Construction, testing and operation of one cluster along the C-43 Canal in Moore Haven; and
 - h. Associated electrical power upgrades and telemetry; and
 - i. Construction of associated ASR monitoring wells as required by permit.
- b. Wetland Restoration Sites
 - i. Paradise Run Wetland Restoration Site:
 - a. Construction of a 200 cfs inflow pump station;
 - b. Construction of a 100 cfs outlet riser culvert;
 - c. Construction of two 100 cfs culverts;
 - d. Excavation of 24,500 linear feet of channel;
 - e. Associated electrical power upgrades and telemetry;
 - f. Construction of two stilling well walk-ways for pump station and outflow culvert; and
 - g. Construction of a berm if required.
 - ii. Kissimmee River Center Wetland Restoration Site:

- a. Construction of a 100 cfs inflow pump;
- b. Construction of a 75 cfs outlet riser culvert;
- c. Excavation of 21,500 linear feet of channel;
- d. Associated electrical power upgrades and telemetry;
- e. Construction of two stilling well walk-ways for pump station and outflow culvert; and
- f. Construction of a berm if required.

2. The Non-Federal Interest shall complete all necessary environmental coordination and obtain all applicable Federal, State, and local permits required for the performance of any Proposed Work it carries out.

3. Any costs incurred for the cleanup of hazardous material regulated by the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"; 42 U.S.C. Sections 9601-9675), that may exist in, on, or under lands, easements, or rights-of-way required for the Proposed Work are a Non-Federal Interest responsibility. No credit shall be afforded for such cleanup costs unless otherwise provided for in the Project Partnership Agreement and consistent with Article II. A.1 of the Master Agreement.

4. As between the Government and the Non-Federal Interest, the Non-Federal Interest shall be considered the operator of the Proposed Work for the purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Interest shall operate, maintain, repair, replace, and rehabilitate the Proposed Work in a manner that will not cause liability to arise under CERCLA.

5. The Government may inspect any work performed under this Agreement. The Non-Federal Interest hereby gives the Government the right to enter, at reasonable times and in a reasonable manner, upon lands, easements, or rights-of-way which the Non-Federal Interest owns or controls for access to the Proposed Work for the purposes of inspection.

6. The parties to this Agreement shall each act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

7. The Non-Federal Interest understands that to be eligible for credit for the costs of the Proposed Work:

- a. The Assistant Secretary of the Army (Civil Works) must make a written determination that the Proposed Work is integral to the authorized project;
- b. The Proposed Work must comply with applicable Federal design and construction standards and applicable Federal and State laws and regulations for construction of Federal public works projects, including, but not limited to, satisfactory compliance with:

- i. Applicable Federal labor laws covering non-Federal construction such as 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*));
 - ii. the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*);
 - iii. the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c);
 - iv. Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d);
 - v. Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and
 - vi. Applicable provisions of Chapter 373, Florida Statutes. Credit will not necessarily be afforded for costs associated with compliance with state statutes and regulations.
 - c. The Non-Federal Interest shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total costs for the Proposed Work and the Non-Federal Interest shall make such evidence available for inspection and audit by authorized representatives of the Government;
 - d. Any contract awarded for the Proposed Work shall include provisions consistent with all applicable Federal and State laws and regulations;
 - e. Except as otherwise provided by Section 601(e)(3) of the Water Resources Development Act of 2000, the Non-Federal Interest shall not use Federal funds for the Proposed Work unless the Federal granting agency verifies in writing that the expenditure of such funds for a non-Federal matching share is expressly authorized by statute; and
 - f. The costs for the Proposed Work must be auditable, reasonable, allocable, allowable, and necessary, as determined by the Government.
8. The Non-Federal Interest understands that:
- a. Section 902 of the Water Resources Development Act, Public Law 99-662, as amended, establishes the maximum cost of the authorized project;
 - b. The costs incurred for the Proposed Work are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the Proposed Work is completed and the time that credit may be afforded; and
 - c. Any costs attributable to land management, any costs of clean-up of hazardous

material regulated by the CERCLA (except as provided in paragraph 3), and any costs of operation, maintenance, replacement, repair, or rehabilitation of the Proposed Work incurred prior to execution of a Project Partnership Agreement are not eligible for credit.

9. If the parties agree to enter into a Project Partnership Agreement for the project, then the Project Partnership Agreement will contain provisions that allow for credit if the Secretary determines that the Proposed Work for which credit is sought is integral to the authorized project and the terms and conditions required under the Pre-Partnership Credit Agreement have been met.

10. Nothing in this agreement creates any duty, obligation, commitment to, participation in, or responsibility for the planning, design or construction of the Proposed Work by the Corps. Any activity undertaken by Non-Federal Interest for implementation of the Proposed Work is solely at its risk and full responsibility. Any duty, obligation or responsibility for the Proposed Work by the Government will only arise if and when the Proposed Work is accepted by the Government as part of a Federal water resources development project through compliance with the terms of an executed Project Partnership Agreement providing for implementation of a Federal project.

11. Execution of this Agreement shall not:

- a. be relied upon as a promise of Federal approval for any project nor the inclusion of any of the Proposed Work as integral to a Federally authorized project;
- b. commit the United States to any type of reimbursement or credit for the Proposed Work;
- c. alter any process followed by the Government in determining the requirements or planning the design for the Federal project to achieve its Federal purposes;
- d. be construed as preventing the Government from modifying the Federal project or any portion of the Federal project that could result in the Proposed Work performed by the Non-Federal Interest no longer being integral to the Federal project;
- e. provide any assurance that a Project Partnership Agreement will ever be executed for the project, the Proposed Work, or any portion of the project; and
- f. be construed as committing the Government to assume any responsibility for the Proposed Work.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

THE DEPARTMENT OF THE ARMY

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT

BY: _____
Andrew D. Kelly
Colonel, U.S. Army
District Commander

BY: _____
Drew Bartlett
Executive Director

Date: _____

Date: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the South Florida Water Management District, and that the South Florida Water Management District is a legally constituted public body with full authority and legal capability to perform the terms of this Comprehensive Everglades Restoration Plan Pre-Partnership Credit Agreement between the Department of the Army and the South Florida Water Management District in connection with the Proposed Work to be carried out prior to signing a Project Partnership Agreement for the Lake Okeechobee Watershed Restoration Project and that the person who has executed this Agreement on behalf of the South Florida Water Management District has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

_____ day of _____ 2019.

Paula L. Cobb
General Counsel
South Florida Water Management
District